

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re N.N., a Person Coming Under the Juvenile
Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

P.S.,

Defendant and Appellant.

F078417

(Super. Ct. No. 17CEJ300076-1)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Leanne LeMon,
Commissioner.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County
Counsel, for Plaintiff and Respondent.

-ooOoo-

* Before Levy, Acting P.J., Franson, J. and Smith, J.

INTRODUCTION

At a Welfare and Institutions Code¹ section 366.26 hearing, the juvenile court selected planned permanent living arrangement as the permanent plan for N.N. (the minor). At that same hearing, the juvenile court granted the Fresno County Department of Social Services' (the department) section 388 petition to modify mother's visits to supervised therapeutic visits once per week. Mother appeals the grant of the section 388 petition contending the juvenile court abused its discretion. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Mother is the appellant and her sole issue on appeal is a challenge to the juvenile court's granting of the department's section 388 petition. Our recitation of facts focuses on those facts relevant to this issue.

The minor suffers from a serious medical condition known as Diamond-Blackfan anemia, a bone marrow disorder. Failure to receive recommended treatment places the minor at risk for long term complications or death.

The Sacramento County Department of Health and Human Services filed a section 300 petition on behalf of the minor in 2004 when she was three months old. The petition alleged the parents refused to authorize needed medical treatment due to their religious beliefs. The minor was provided with the treatment pursuant to a juvenile court order. The juvenile court ordered the parents to participate in services to assist them in working with medical professionals. The case was closed in 2005.

On March 14, 2017, the department received a referral regarding the minor alleging general neglect by mother. It was reported that mother and a maternal aunt refused recommended treatment for the minor and mother discharged the minor from the hospital against medical advice. The minor had missed medical appointments in the previous months and mother had not always authorized treatments recommended by

¹ References to code sections are to the Welfare and Institutions Code.

medical personnel. There was a history of noncompliance with medical advice received from University of California Davis Medical Center, Valley Children's Hospital, and Stanford Medical Center.

On March 17, 2017, the department filed a section 300 petition on behalf of the minor alleging that the minor came within the provisions of section 300, subdivision (b)(1) in that mother had failed to provide adequate medical care for the minor and failed to protect the minor. It also was alleged that the minor fell within the provisions of section 300, subdivision (g), in that father's whereabouts were unknown.

A team decision meeting was conducted on March 17, 2017, with medical personnel, social workers, mother, and the maternal aunt. The department opined that there was substantial danger to the minor's physical health, including liver, cardiac and endocrine damage and possible death, if the minor did not receive medical treatments. The department decided not to offer voluntary services because mother had not demonstrated an ability to follow through on the minor's medical treatments.

The juvenile court ordered the minor detained from mother on March 21, 2017. The jurisdiction and disposition report noted there was a close relationship between the minor and mother. The mother told the social worker she was "willing to do whatever it takes to reunify" with the minor. However, the mother did not believe the department needed to provide any services or support and only needed to return the minor to mother's care.

Valley Children's Hospital would not agree to treat the minor if mother was involved in her care. Mother had not been compliant with medical recommendations and had been threatening to staff.

The minor's father had been located in Sacramento. He had not had any contact with the minor for three years. Father expressed an interest in having the minor placed with him. Although father was Jehovah's Witness and his religion forbade blood

transfusions, he informed the social worker he would not withhold treatment for the minor.

The department did not recommend placement at this time with father because of the lack of contact for three years. There were no other relatives to assess for placement. The department opined that the minor was at substantial danger if she was returned to mother's care.

The minor had been placed in a licensed foster care home upon removal from mother's custody. The care provider was making sure the minor consumed her required medication. The care provider reported that the minor was having some trouble adjusting to a schedule because the minor wanted to stay awake all night and sleep through the morning.

Mother and the minor were having weekly visits. Mother claimed the minor was not being properly fed while in foster care, was being "bullied" and forced to do chores, and there were "animals" in the home. Mother did not like the timing of the visits, 12:45 to 2:15 p.m., because she and the minor were not accustomed to getting up early.

The department expressed concern that mother was discussing the dependency case with the minor during visits, despite being warned not to do so. Mother did not cooperate on time limits on phone calls with the minor. The care provider reported that the minor refused to engage in normal activities after a visit with mother, claiming she was sick, and was resistant to speaking with her father after a visit from mother. The minor also would state she "does not need to follow the care provider's rules or listen to her while she is under her care."

On August 1, 2017, the juvenile court made a true finding on the section 300 petition. The minor was declared a dependent of the juvenile court and removed from mother's custody. The department was ordered to provide reunification services to both parents and mother was to have reasonable unsupervised visitation with the minor.

On November 30, 2017, the department filed a section 388 petition to terminate services to father because he refused to participate.

In a December 2017 status review report, the department recommended continued services to mother. The department reported the minor could be “disruptive in her placement.” The minor was having trouble adjusting to a schedule, did not like being told what to do, and was wetting the bed three to four times a week because she was “unaware” she needed to use the restroom.

Mother was participating in therapy and on a waiting list for a psychological evaluation. Mother was visiting with the minor every Thursday evening and taking the minor to worship services. Mother was unemployed and living with her sister.

In a report filed on June 11, 2018, the department again recommended termination of services to father. Mother was visiting with the minor every Thursday evening and on Sundays; mother took the minor to worship services both days. The minor was developmentally age appropriate, however, she struggled with normal personal hygiene such as bathing regularly or brushing her teeth. The minor was defiant with the care provider; refused to get up in the mornings for school; and would purposefully miss the school bus. The minor told the social worker she did not like her current placement.

A review hearing was conducted on June 11, 2018. The juvenile court found the department had provided both parents with reasonable reunification services. The juvenile court found that mother had made “moderate” progress and father had made “none.” The juvenile court terminated reunification services for both parents; set the matter for a section 366.26 hearing; and denied the section 388 petition against father as moot.

The psychologist who evaluated mother testified at the June 11, 2018 hearing that mother suffered from a narcissistic personality disorder. She testified that during the dependency case, mother “has not demonstrated the ability to develop new skills or changed behavior such that she would be able to provide a safe stable nurturing

environment for her daughter.” Mother was capable of “cognitively and intellectually” following a judicial directive to obtain medical treatment for the minor but the psychologist stated she had “concerns about whether or not [mother] would.” When the psychologist asked mother if she would change anything with regards to how she had handled medical treatment for the minor in the past, mother stated she “wouldn’t change anything.” Mother did not agree with the medical recommendations for her daughter’s care.

In her discussions with the psychologist, mother was very clear that she had never done anything wrong with regards to medical decisions for the minor or behaviors with medical staff. Mother claimed racism, being harassed, and people conspiring against her all occurred in her dealings with medical staff. The psychologist was concerned because mother expressed the opinion that she did not need services, would not do anything differently, and that there was no need for her to change. The psychologist did not believe that mother would be able to develop “within the statutory time frame” the skills necessary to make medical decisions for her daughter.

At the conclusion of evidence and argument at the June 11, 2018 hearing, the trial court took a brief recess to consider all the evidence. In issuing its ruling, the juvenile court noted that the dependency was initiated because of mother’s failure to access needed medical treatment for the minor and mother’s “demonstrated hostility” toward medical staff at multiple hospitals, which placed the minor in a life-threatening situation. The juvenile court noted that the minor was not removed from mother’s care because mother failed to understand the need for treatment, rather it was because of mother’s state of mind and resulting behaviors.

The juvenile court articulated the “problem” as whether mother would allow the minor to receive medically necessary procedures and treatments. Mother had demonstrated an unwillingness to work with others regarding the minor’s care, whether it be medical personnel or the care provider. The juvenile court noted that after visitations

with mother, the minor would express dissatisfaction with the care provider, engage in poor behaviors, and mimic mother's positions on school and medical procedures. The juvenile court described mother as having an "overreaching" influence on the minor and used it to turn the minor against others involved in the minor's life, such as medical providers, social workers, and school officials.

The juvenile court noted that mother continued to alienate those providing care for her daughter, even after receiving services. Mother's therapist had noted that mother was "not making any progress at all in therapy." The juvenile court expressed concern about the results of mother's psychological evaluation and also found that mother's responses to several questions put to her were "dishonest."

When there was an attempt to allow more liberal visitation with mother, mother refused to agree to a safety plan requiring administration of medication to the minor. The risk assessment revealed that mother continued to pose a substantial risk to her daughter. The juvenile court noted that it would be "impossible" for a person to change their behaviors "when there is no acknowledgement for the need of change." The juvenile court found that the minor was deeply influenced by mother's isolation, control, and suspicion of authority. Mother's continuing influence on the minor would work to undermine care providers, social workers, medical professionals, and school authorities.

The juvenile court found that mother's participation in services was "moderate" but she failed to benefit from services. The juvenile court also found that returning the minor to mother's care would create a substantial risk of detriment to the minor.

On September 10, 2018, the department filed a section 388 petition to suspend mother's visitation with the minor because the minor's behavior suffered after visits with mother.

A hearing on November 7, 2018, was a combined hearing on the department's section 388 petition to terminate mother's visitation and a section 366.26 permanent plan hearing. The juvenile court found that mother's progress toward alleviating the causes of

the filing of the section 300 petition had been “minimal.” The juvenile court ordered that services be provided to the minor, a teenager, to assist her in transitioning from “foster care to successful adulthood.” The permanent plan for the minor was that she continues in foster care until a “fit and willing” relative placement could be secured. Parental rights were not terminated.

As to the section 388 petition to terminate mother’s visitation, the juvenile court stated, “it appears that the issues surrounding the mother’s visitation with the minor that are unsupervised have caused the minor to not comply with the care provider’s requests, that there has been an increase in aggressive behavior verbally,” and that “visits between the mother has a negative influence on [the minor] and makes it difficult for her to be in the caregiver’s home and to comply with orders that the Court believes are beneficial” to the minor.

The juvenile court ordered that mother and the minor have “therapeutically supervised visits.” The visits were to occur “a minimum of one time per week.” The department was given “discretion to increase visits to supervised if they find that that is appropriate.” Educational rights were to be with the minor’s care provider.

The juvenile court’s ruling on the department’s section 388 petition was filed on November 7, 2018. Mother filed a timely notice of appeal.

DISCUSSION

Mother challenges as an abuse of discretion the juvenile court’s ruling on the section 388 petition restricting her visits with the minor to therapeutically supervised visits.

Section 388

Section 388 provides for modification of juvenile court orders when the moving party presents new evidence or a change of circumstances and demonstrates modification of the previous order is in the child’s best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*); *In re Y.M.* (2012) 207 Cal.App.4th 892, 919; see Cal. Rules of

Court, rule 5.570(e).) The standard of review for an order denying a section 388 petition is abuse of discretion. “The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415–416.)

The petitioner has the burden of proof by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).) Courts liberally construe a section 388 petition in favor of its sufficiency. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) In assessing the petition, the court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) Where there is conflicting evidence, we reverse only if the evidence compels a finding for the appellant as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527–1529.)

The best interests of the child are of paramount consideration when a section 388 petition is brought after reunification services have been terminated. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) In assessing the best interests of the child at this juncture, the juvenile court’s focus is on the needs of the child for permanence and stability. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.)

Analysis

Mother contends the department failed to show changed circumstances or that a change in visitation would be in the minor’s best interests. We disagree.

The section 388 petition to terminate or modify mother’s visitation was filed on September 10, 2018, and heard in conjunction with the section 366.26 hearing on November 7, 2018. At that hearing, the juvenile court concluded the minor would not be returned to mother’s custody and would be provided with services to help her transition to adulthood successfully. Mother had unsupervised visitation with the minor during the period reunification services were being offered. The circumstances had changed significantly, however, by the time of the filing of the department’s section 388 petition

and the hearing on the petition; reunification with mother had failed and a permanent plan was being set for the minor.

The evidence also established that a change in visitation with mother was in the minor's best interests. The section 388 petition noted that the minor exhibited verbally aggressive behavior after visits with her mother; the mother's visits had a negative influence on the minor; and the minor was in danger of losing her current placement as a result. This was the conclusion of the Central Star Behavioral Health team, who had witnessed the minor's behavior toward the care provider and in the care provider's home. The team opined in a letter dated September 6, 2018, that the minor was in danger of losing her placement with the care provider because of the problems engendered by visits with mother.

The evidence submitted with the section 388 petition established that the minor's behavior had "escalated" since the last hearing. Mother was undermining the care provider's authority; encouraging the minor to defy the care provider; and leading the minor to believe that if she defied the care provider, she would be returned to mother's custody. Although the minor had made progress in therapy, she experienced setbacks each week after visiting with mother. The minor had recently been refusing to take necessary medications, which could result in her death. The care provider stated the minor's bad behaviors had been increasing, to the point of needing police intervention, and occurred after visits with mother. A prior evaluation of mother indicated mother might be attempting to keep the minor completely dependent upon her.²

While there may have been concerns around mother's influence on the minor throughout the case, by the time of the hearing on the section 388 petition, as the juvenile court noted, it was apparent that mother's unsupervised visitation with the minor caused

² There was some indication mother exhibited symptoms of Munchausen by Proxy, currently known as factitious disorder imposed on another.

the minor “to not comply with the care provider’s requests, that there has been an increase in aggressive behavior verbally,” and that “visits between the mother has a negative influence on [the minor] and makes it difficult for her to be in the caregiver’s home and to comply with orders that the Court believes are beneficial” to the minor.

The best interests of the minor are of paramount consideration when a section 388 petition is heard after reunification services have been terminated. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The best interests of the minor were to make continuing progress in her therapy and in developing the skills she needed to succeed as an adult; to follow the advice of medical providers and take the medications necessary for her condition; and to maintain stability in a placement. None of these goals were likely to be achieved with continued unsupervised visits with mother.

We find no evidence that would compel us to reverse the juvenile court’s order as a matter of law and we decline to do so. (*In re I.W.*, *supra*, 180 Cal.App.4th at pp. 1527–1529.) The juvenile court did not abuse its discretion. (*In re Jasmon O.*, *supra*, 8 Cal.4th at pp. 415–416.)

DISPOSITION

The juvenile court’s November 7, 2018 order, on the department’s Welfare and Institutions Code section 388 petition to terminate or modify mother’s visitation, is affirmed.